

Having reviewed the evidentiary record filed herein, the Appeals Board makes the following findings of fact and conclusions of law:

The original Award in this matter was issued May 9, 1996, wherein the claimant was awarded a 7.5% permanent partial disability. An appeal to the Workers Compensation Appeals Board resulted in an Order issued October 31, 1996, modifying the Award of the Administrative Law Judge and awarding claimant a 66.67% permanent partial disability. The Award was then reduced to a 7.5% functional whole body disability as of February 29, 1996, when respondent offered claimant an accommodated job at a comparable wage. Claimant filed an "Application for Review and Modification/Application for Post-Award Medical and Attorneys Fees" on February 7, 1997. A hearing before the Administrative Law Judge was held April 17, 1997, with the Order of the Administrative Law Judge being issued on June 17, 1997. In the Order the Administrative Law Judge denied claimant's request for post-award medical finding that three years had passed since claimant was released by Grace Lea Stringfellow, M.D., the treating physician, and during that period of time claimant had not been employed by respondent except for a very short one-and-a-half month period. The Administrative Law Judge went on to find that claimant had the burden of proving entitlement to the benefits requested. The Administrative Law Judge found that claimant's testimony, which was the only evidence presented, was not sufficient to prove that claimant was entitled either to a review and modification of the award or to post-award medical treatment.

In workers compensation matters it is claimant's burden to prove her entitlement to the benefits requested by a preponderance of the credible evidence. See K.S.A. 1996 Supp. 44-501 and K.S.A. 1996 Supp. 44-508(g). In this instance there is no evidence or expert testimony to show that claimant is in need of ongoing medical treatment. Claimant testified that she was in pain, with the pain fluctuating with activity. This condition is no different than that experienced by claimant throughout the litigation of this matter. Absence some additional proof of a change of circumstance, the Appeals Board finds the denial of additional post-award medical treatment is appropriate and is affirmed.

With regard to claimant's request for post-award attorney fees, K.S.A. 44-536(g), in effect prior to July 1, 1997, requires that in post-award litigation attorney fees shall be awarded by the Director on the basis of reasonable and customary charges. However, it is the burden of the party requesting the benefit to prove the entitlement to the benefit and the amount of such benefit. While attorney fees were at issue before the Administrative Law Judge there is no evidence to indicate the amount of attorney fees requested or the amount of time involved in the litigation. As such, the denial by the Administrative Law Judge of attorney fees would be appropriate as no evidentiary basis was provided in the record upon which to base an attorney fee award. Therefore, the Appeals Board finds the Order of Administrative Law Judge Kenneth S. Johnson denying claimant post-award medical treatment and attorney fees is appropriate.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Kenneth S. Johnson dated June 17, 1997, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 1997.

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BOARD MEMBER

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BOARD MEMBER

c:     Lawrence M. Gurney, Wichita, KS  
       Jerry M. Ward, Great Bend, KS  
       Kenneth S. Johnson, Administrative Law Judge  
       Philip S. Harness, Director